

EXHIBIT O

[August 21, 2019 letter from David R. Kocan to Eric
Vandevelde – REDACTED]

Morgan Lewis

David R. Kocan

Associate
+1.415.442.1323
david.kocan@morganlewis.com

Eric D. Vandavelde
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue, Los Angeles, CA 90071-3197
Tel +1 213.229.7186
Fax +1 213.229.6186
EVandavelde@gibsondunn.com

August 21, 2019

Re: Notice Regarding Preservation of Electronic Evidence

Dear Eric:

It has come to Oracle's attention through an investigation related to Rimini's use of the AFW TransferFiles tool on or after November 5, 2018 that this Rimini-designed tool routinely deleted files stored on Rimini-hosted FTP servers during the *Rimini II* time period. Rimini has not discussed this feature of AFW in its interrogatory responses describing the changes made to its processes on or after November 5, 2018. Thus, Oracle reasonably believes that Rimini has continued to delete files stored on Rimini-hosted FTP servers on or after this date.

As Rimini knows, under Fed. R. Civ. Pro. 37, Rimini is required to preserve all documents, tangible things, and electronically stored information ("ESI") that are potentially relevant to the issues in this case. The duty to adequately preserve ESI requires more than simply refraining from destroying or disposing of relevant evidence. Rimini is also required to intervene to prevent loss due to routine operations and to employ proper techniques and protocols to preserve ESI. Oracle has not only repeatedly reminded Rimini of this duty (*see, e.g.*, Jan. 2, 2019 Letter from Z. Hill to J. Gorman at 3), Rimini has also acknowledged its duty by responding to Oracle with assurances that it "has been complying, and will continue to comply, with its obligation to preserve documents and other materials related to its support for the Oracle products at issue in the ongoing litigation." Feb. 7, 2019 Letter from Letter from E. Vandavelde to Z. Hill; *see also* April 24, 2019 Letter from E. Vandavelde to K. Hartnett at 4; Jan. 23, 2019 Letter from E. Vandavelde to Z. Hill at 2.

The files stored on Rimini-hosted AFW FTP servers (including those apparently deleted by Rimini) are highly relevant to this case and subject to Rimini's preservation obligation. Among other things, and as Rimini knows, files on its AFW FTP servers include software update files for Oracle software and other materials that Rimini delivers to customers. Moreover, unlike the [REDACTED] function upon which Rimini largely relied during the *Rimini II* time period, AFW TransferFiles does not [REDACTED]. Thus, any deletion of files from Rimini's AFW FTP servers, including in connection with the AFW TransferFiles tool, would be highly prejudicial to Oracle.

Morgan, Lewis & Bockius LLP

One Market
Spear Street Tower
San Francisco, CA 94105-1596
United States

T +1.415.442.1000
F +1.415.442.1001

August 21, 2019
Page 2

Consequently, Oracle asks Rimini to immediately disable this deletion function and investigate, identify, and modify or suspend any other functions or features that operate to cause the loss of potentially relevant ESI. Oracle also asks that Rimini immediately initiate a litigation hold for all potentially relevant ESI stored on AFW servers and to act diligently and in good faith to secure and audit compliance with such litigation hold.

Given this new information, Oracle's outstanding request for an inspection of Rimini's AFW servers is even more warranted and urgent. Assuming that Rimini continues to use TransferFiles after it ceases deleting the transferred files, an inspection will allow Oracle to confirm that the deletion function has been disabled. Moreover, an immediate inspection is essential because the likelihood of forensically recovering any deleted files quickly diminishes with time. Accordingly, Oracle reasserts its request for inspection of Rimini's AFW servers and requests that the inspection occur no later than August 30, 2019.

Within five days (5) of this correspondence, please confirm in writing the date on which Rimini disabled or will disable this function, and the dates before August 30, 2019 on which Rimini is available for an inspection of its AFW servers. Within ten (10) days of this correspondence, please identify in writing the time period(s) during which this deletion function was used, the names of all files that have been deleted, the full directory listings of any files that have been deleted, and the date on which any files were deleted.

This letter serves as notice that Rimini must preserve any and all records concerning the subject matter of this letter. Any failure to preserve evidence, including any intentional or negligent destruction of such evidence, constitutes spoliation of evidence and may entitle Oracle to sanctions. Oracle reserves all rights.

Sincerely,

/s/ David R. Kocan
David R. Kocan

DRK

C: Jeremy M. Christiansen
Blaine H. Evanson
Joseph A. Gorman
Samuel Liversidge
Brett Long
Shaun Mathur
Amber McKonly
Jacob O. Minne
Tracy A. Morgan
Mark A. Perry
Jeffrey T. Thomas
Eric D. Vandavelde
Cynthia Weaver